UNITED NATIONS

General Assembly

FORTY-EIGHTH SESSION

Official Records

SIXTH COMMITTEE
34th meeting
held on
Monday, 22 November 1993
at 10 a.m.
New York

SUMMARY RECORD OF THE 34th MEETING

Chairman: Mrs. FLORES (Uruguay)

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Distr. GENERAL
A/C.6/48/SR.34
1 February 1994
ENGLISH
ORIGINAL: SPANISH

93-82594 (E)

The meeting was called to order at 10.30 a.m.

AGENDA ITEM 148: REQUEST FOR AN ADVISORY OPINION FROM THE INTERNATIONAL COURT OF JUSTICE (A/48/291-S/26242 and Corr.1)

1. Mr. SARDENBERG (Brazil) said that the item under consideration had been included in the agenda of the General Assembly in 1992, pursuant to a decision adopted at the Ibero-American Summit of Heads of State and Government, held in Madrid in July 1992, for the reasons outlined in the annex to document A/47/249.

2. With the rise in criminality, States had felt the need to reinforce measures aimed at preventing criminal acts and ensuring the prosecution and punishment of those responsible for such acts through the strengthening of international judicial cooperation. However, some States had acted as if their jurisdiction could legitimately be exercised beyond their borders, thus impinging upon the jurisdiction of other States. Such conduct was not only contrary to the basic principles of international relations, but also detrimental to the proper functioning of the normal system of judicial cooperation and its future development and enhancement. It could be assumed that the States in question believed that no norm existed which required a different conduct on their part. That presented a legal problem which, in the view of the 21 countries represented at the Ibero-American Summit, could be solved by requesting an advisory opinion from the International Court of Justice.

3. It was surprising that consensus had not been reached on that proposal, since it was entirely logical for the General Assembly, when confronted by a legal question, to request an opinion from the Court. If all States could agree that the issue of the international exercise of criminal jurisdiction should be resolved through international judicial cooperation, and that no State was entitled to arrest or apprehend a person in the territory of another State without its consent, the Court's opinion would not be necessary. However, if differences of opinion persisted, the Court should be asked to carry out its functions. His delegation trusted that a decision in the matter could be reached by general agreement and, to that end, was prepared to consider changes in the wording of the draft resolution contained in document A/47/249/Add.1.

4. Mr. JARAMILLO (Colombia) said that his delegation was convinced that the rule of international law and, in particular, the Charter of the United Nations, should be the determining factors in international relations, and that no body was more qualified to decide and express opinions on legal matters than the International Court of Justice, whose independence ensured impartial and objective decisions.

5. At the Ibero-American Summit of Heads of State and Government, held in Madrid in 1992, the 21 participants had signed a declaration in which they had reaffirmed the principles of international law, rejected any interpretations aimed at recognizing the possibility of applying domestic legislation extraterritorially and decided to ask the General Assembly to request an advisory opinion on the subject from the International Court of Justice.

(Mr. Jaramillo, Colombia)

Colombia supported that position because the International Court of Justice was the main United Nations judicial organ of a universal character whose compulsory jurisdiction it had accepted. However, the Court's capacity to prevent or resolve conflicts had so far been insufficiently utilized, both with regard to controversial cases and to its advisory powers. Since recourse to the Court's opinions was a peaceful means of dispute settlement and facilitated the defusing of crises, Colombia expressed its support for and interest in more frequent recourse to that modality.

6. Furthermore, the incidence of criminality had unquestionably increased significantly, and was reaching ever more alarming proportions. Colombia actively promoted the strengthening of judicial cooperation on the basis of machinery established by the international community, especially legal assistance treaties, the formulation of standardized requests in extradition cases, and so on, which effectively facilitated such cooperation. However, the international community was alarmed at the cases of recourse to unilateral measures and the extraterritorial application of domestic legislation, in contravention of international law. Clearly, a State could not arrest or apprehend a person in the territory of another State without the latter's consent, and transfer him to its own territory to subject him to its criminal jurisdiction. Such conduct was contrary to international law and the principles of sovereign equality, territorial integrity, the rule of law and fulfilment in good faith of international obligations, and also restricted the capacity of States to protect the human rights of their citizens.

7. For the reasons referred to in document A/47/249, the International Court of Justice must determine and specify the rules of international law which applied in that sphere, in order to prevent the entrenchment of practices which prejudiced international judicial cooperation and mutual confidence among States. That would not only contribute to a climate of peaceful and harmonious coexistence among States, but would also add to the Court's judicial precedents, to the benefit of all.

8. Mr. ROZENTAL (Mexico) agreed with the representative of Brazil concerning the need to defend and strengthen the role of the International Court of Justice under the Charter, which was to issue advisory opinions on any legal questions submitted to it by the General Assembly or the Security Council. His Government was especially concerned at the practice of some States which, in lieu of promoting judicial cooperation, attempted to apply domestic legislation extraterritorially in the jurisdiction of other sovereign States. The Organization had dealt with that issue for many years; in 1948, and then in 1971, the Secretary-General had referred to the obligation of States to refrain from exercising jurisdiction in the territory of other States, except with the express consent of the States concerned, and all judicial bodies had been prohibited from exercising jurisdiction over persons apprehended in violation of the territorial sovereignty of other States; the most flagrant case in which that principle applied was that of international abductions.

9. Mexico attached great importance to the work of defining the norms of international law that were applicable in that sphere so as to prevent the

(Mr. Rozental, Mexico)

establishment or consolidation of unilateral practices that would undermine international judicial cooperation and mutual trust among States. Respect for territorial sovereignty was inherent in the existence of an international society ruled by law, as was recognized in the Charter of the United Nations and the decisions of the International Court of Justice. The Security Council had recognized that principle in the specific case of abductions, in resolution 138 (1960). Although some countries had established the principle that no one brought to justice by means of abduction could be prosecuted, other States, although they regarded abduction as a violation of international law which gave rise to reparation, maintained their right to judge the alleged offender. That type of situation had led to initiatives to reform domestic law, not only so as to prohibit abductions, but also so as to ensure that no one could exercise jurisdiction over the alleged offender and so as to order repatriation.

10. Over the past 40 years there had been an unprecedented development of international judicial cooperation and hundreds of treaties had been concluded that were linked with some aspect of that cooperation. For that reason it was important to allay any doubts persisting in that regard, and Mexico believed that States should resort more frequently to the International Court of Justice, not only to resolve their differences but also to prevent the emergence of disputes among States. Mexico supported the initiative of the Secretary-General that he should be authorized to seek advisory opinions from the International Court of Justice. It also shared the view of the representative of Brazil that proposals for the consideration of the topic in a constructive manner should be studied at an appropriate time; for the time being, his delegation suggested that consideration of the item should be deferred and that it should be included in the provisional agenda of the forty-ninth session of the General Assembly.

11. Mrs. GAO Yamping (China) said that respect for the sovereignty and territorial integrity of States was a fundamental principle of international law; that principle was the basis for normal international relations and, therefore, was very important for the maintenance of international peace and security. It was enshrined in the Charter of the United Nations as a basic obligation of all Member States.

12. Personal and territorial jurisdiction were the very expression of the sovereignty of a State. It was citizens therefore indisputable that Mexico had exclusive and final authority over its citizens residing within its territory. Any unilateral action taken in its territory without its prior consent, regardless of the purposes sought, would infringe on Mexico's sovereignty and would constitute a violation of international law.

13. The illicit traffic of narcotic drugs harmed human society and brought serious political, economic and cultural consequences. The international community strongly opposed and condemned it. Within the United Nations, international instruments had been concluded to combat it, such as the Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. Those instruments provided a legal

(Mrs. Gao Yamping)

basis and safeguards for the strengthening of the international cooperation that was needed to combat effectively the illicit traffic of drugs and were in line with the principle of "try or extradite" (aut dedere aut judicare). In other words, if a country did not extradite an offender to another country, it had the obligation to prosecute and punish him.

14. Under the current regime established by international law, it would be very difficult for criminal offenders involved in drug trafficking to escape the punishment of the law. Her delegation believed, however, that the jurisdiction of States, in particular extraterritorial jurisdiction, should be exercised in that sphere with the utmost prudence. Prior consent should always be obtained from the other State concerned, because any impropriety in the exercise of such jurisdiction could undermine the sovereignty of that State and give rise to serious consequences which would ultimately undermine international cooperation.

15. China believed that the Committee's consideration of the item would be of value, and hoped that the issue would soon be resolved in a just and reasonable manner.

16. Mr. MIRZAEE YENGEJEH (Islamic Republic of Iran) said that the principles of the sovereign equality and territorial integrity of States were fundamental principles of international law which formed the cornerstone of contemporary international relations. Those principles had been incorporated in a number of international instruments such as the Charter of the United Nations, the Manila Declaration on the Peaceful Settlement of International Disputes and the Declaration on Principles of International Law concerning Friendly Relations and cooperation among States in accordance with the Charter of the United Nations.

17. The old theory of absolute sovereignty had declined in the contemporary world, which was no longer an "anarchy of sovereignties" but could now be characterized as a society of interdependent States. Countries were bound not only by freely accepted treaty obligations but also by the generally accepted principles of customary international law. Moreover, sovereignty created international law, and that law recognized sovereignty as its foundation. In other words, the law of nations arose directly from the consent of States: it was a law of coordination, not of subordination. Consequently, observance of international law did not depend on the discretionary will of States, since when they undertook certain obligations through treaties, they were bound to fulfil them. The principle pacta sunt servanda was a universally recognized principle.

18. It was universally recognized that in the case of a conflict between the domestic law of a State and international law, the latter prevailed. That had been the conclusion reached by the Permanent Court of International Justice in the Danzig case. Apart from some particular situations, in respect of which public international law provided for detailed rules concerning the exercise of extraterritorial jurisdiction, a State could, through bilateral agreements, allow another State to exercise jurisdiction in its territory. In such cases, however, the prior consent of the State granting authorization was essential.

(Mr. Mirzaee Yengejeh, Islamic Republic of Iran)

19. With regard to the item under consideration, his delegation wished to stress that public international law did not regulate the apprehension of an accused person by a given State in the territory of another State but that the consent of the latter State was undoubtedly required. It was clear that, without that consent, the apprehension or arrest of accused persons constituted a violation of the principles of international law already mentioned. The Security Council, in resolution 138 (1960) had stated that such actions "which affect the sovereignty of a Member State and therefore cause international friction, may, if repeated, endanger international peace and security".

20. His delegation was prepared to support any step that the Committee might wish to take in order to elevate the rule of law in international relations.

The meeting rose at 11.10 a.m.